



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

December 22, 2003

Gary Naftalis, Esq.
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022

Re: Canadian Imperial Bank of Commerce

Dear Mr. Naftalis:

This letter sets forth the agreement between the United States Department of Justice, by the Enron Task Force (the "Department"), and the Canadian Imperial Bank of Commerce ("CIBC")¹ (the "Agreement").

1. During the Department's ongoing criminal investigation into matters relating to the collapse of Enron Corp. ("Enron"), the Department has notified CIBC that, in the Department's view, CIBC and its personnel have violated federal criminal law. In particular, the Department has notified CIBC that CIBC and certain CIBC employees: (a) violated federal criminal law in connection with certain FAS 125/140 transactions,² explained in Appendix A hereto; and (b) aided and abetted Enron's violation of federal criminal law in connection with the same transactions.

¹ In this Agreement, "CIBC" refers to CIBC and all of its subsidiaries and corporate affiliates.

² "FAS 125/140 transactions" refers to sales of financial assets by Enron to a special purpose entity ("SPE"), intended to comply with either Financial Accounting Standards ("FAS") No. 125, "Standards for Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," or its successor, FAS No. 40. In 1999, various amendments were proposed to FAS 125, ultimately leading to the issuance of FAS 140 in September 2000. FAS 125 and 140 both provide that a transfer of assets occurs only to the extent that the transferor surrenders control over transferred assets. This requirement is met only if the transferor "does not maintain effective control over the transferred assets through . . . (1) an agreement that both entitles and obligates the transferor to repurchase or redeem them before their maturity . . ." In addition, to comply with FAS 125/140, the SPE used to effectuate the transaction must include at least 3 percent equity investment from an independent source.

2. CIBC accepts responsibility for the conduct of its employees giving rise to any violation in connection with the FAS 125/140 transactions. As more fully addressed in paragraph 8, CIBC will not contradict the factual statements set forth in Appendix A hereto (incorporated by reference herein (hereinafter, "Factual Statement"). CIBC does not endorse, ratify, or condone criminal conduct and, as set forth below, has taken steps to prevent such conduct from occurring in the future.

3. Based upon CIBC's acceptance of responsibility as set forth in the preceding paragraph; its entry into the Agreement by and among CIBC, the Superintendent of Financial Institutions, Canada ("OSFI"), and the Federal Reserve Bank of New York (the "Federal Reserve") (attached hereto as Appendix B and incorporated by reference); its ceasing to engage in certain structured finance transactions with United States public companies for the period of this Agreement, as specified in Appendix B hereto; its adoption of internal governance and compliance measures to date and the policies and procedures agreed to by the Department, OSFI, and the Federal Reserve, set forth in Appendix B; its commitment to implement and audit all such measures and to the appointment of a Department Monitor as set forth herein; its agreement with the SEC to pay \$80,000,000 pursuant to the terms of the Final Judgment in U.S. Securities and Exchange Commission v. CIBC; and its willingness to continue to cooperate with the Department in its investigation of matters relating to Enron; the Department, on the understandings specified below, agrees that the Department will not prosecute CIBC for any crimes committed by CIBC with Enron relating to the FAS 125/140 transactions. CIBC understands and agrees that if it violates this Agreement, the Department can prosecute CIBC for crimes committed by it through its employees relating to the FAS 125/140 transactions. This Agreement does not provide any protection to any individual or any entity other than CIBC.

The understandings on which this Agreement is premised are:

4. CIBC shall truthfully disclose to the Department all information with respect to the activities of CIBC and its officers and employees, including all transactions with Enron about which the Department shall inquire, and shall continue to fully cooperate with the Department. This obligation of truthful disclosure includes an obligation upon CIBC to provide to the Department, upon request, any document, record or other tangible evidence relating to Enron and any FAS 125/140 transaction or other Enron-related matter about which the Department shall inquire of CIBC. This obligation of truthful disclosure includes an obligation to provide the Department access to CIBC's facilities, documents and employees, whether or not located in the United States. This obligation shall not require CIBC to produce documents generated by OSFI or the Federal Reserve. This paragraph does not apply to any information provided to counsel after February 17, 2002, in connection with the provision of legal advice and the legal advice itself.

5. Upon request of the Department, with respect to any issue relevant to its

investigation of Enron, CIBC shall designate knowledgeable employees, agents or attorneys to provide non-privileged information and/or materials on CIBC's behalf to the Department. It is further understood that CIBC must at all times give complete, truthful and accurate information.

6. With respect to any information, testimony, document, record or other tangible evidence provided to the Department or a grand jury by CIBC pursuant to this Agreement, CIBC consents to any and all disclosures to the SEC, the Federal Reserve, OSFI, and other entities of such materials as the Department, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, CIBC further consents to (a) any order sought by the Department permitting such disclosure and (b) the Department's ex parte or in camera application for such orders. To the extent that the Department provides material pursuant to this paragraph to non-governmental parties, the Department will provide CIBC with 10 days advance notice, to the extent practicable, of what materials are to be provided and to whom.
7. CIBC further authorizes the Department, the SEC, the Federal Reserve, and OSFI to share information from and about CIBC with each other and hereby waives any confidentiality accorded to that information by law, agreement or otherwise that would, absent authorization by CIBC, prohibit or limit such sharing. No further waivers of confidentiality shall be required in that regard.
8. CIBC further agrees that it will not, through its attorneys, board of directors, agents, officers or employees, make any public statement, in litigation or otherwise, contradicting any of the facts set forth in Appendix A. Any such contradictory statement by CIBC, its attorneys, board of directors, agents, officers or employees shall constitute a breach of this Agreement, and CIBC thereafter would be subject to prosecution as set forth in paragraph 11 of this Agreement. Upon the Department's notifying CIBC of such a contradictory statement, CIBC may avoid a breach of this Agreement by publicly repudiating such statement within forty-eight hours after notification by the Department. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by the government against such individual, unless such individual is speaking on behalf of CIBC.
9. CIBC agrees to amend its existing policies and procedures and adopt and implement by February 27, 2004, specific new policies and procedures relating to the integrity of client and counterparty financial statements and quarter-end and year-end transactions (the "Policies and Procedures"). The Policies and Procedures, jointly agreed to by the Department, the Federal Reserve, OSFI, and CIBC, are set forth in Appendix B to the Agreement. Nothing in this Agreement precludes CIBC from amending or changing its Policies and Procedures in the future as long as those amendments or changes do not diminish the Policies and Procedures as set forth in Appendix B. Moreover, nothing in this Agreement

precludes CIBC from adopting additional measures to comply with its agreements with or obligations toward the SEC, the Federal Reserve, or OSFI.

10. CIBC agrees that for a period of three years it will retain and pay for an outside, independent law firm (the "Monitor"), selected by the Department, who shall be acceptable to CIBC.³ It shall be a condition of that retention that the Monitor will be independent and, with respect to communications between CIBC and the Monitor, CIBC shall waive as to the Department, the SEC, the Federal Reserve and OSFI the attorney-client privilege and any other protections accorded to communications and client confidences. Any revocation of these waivers shall constitute a breach of the Agreement. The sharing of such communications by the Monitor with any of the Department, the SEC, the Federal Reserve and OSFI is not intended to constitute a waiver of any privilege under any federal or state law that would shield from disclosure to any other third party any such communications. The Monitor shall:

- (a) monitor CIBC's compliance with this Agreement, relying as appropriate in the judgment of the Monitor on the outside monitor named under the agreement between CIBC and OSFI and the Federal Reserve;
- (b) report to the Department, in coordination with the Federal Reserve and OSFI, on at least a semi-annual basis, as to CIBC's compliance with this Agreement; and
- (c) coordinate with the SEC, Federal Reserve, and OSFI and provide information about CIBC as requested by those agencies.

11. It is further understood that should the Department, in its sole discretion, determine that CIBC has given deliberately false, incomplete, or misleading information under this Agreement, or has committed any crimes, or that CIBC otherwise has violated any provision of this Agreement, CIBC shall, in the Department's sole discretion, thereafter be subject to prosecution for any federal criminal violation. Any such prosecutions may be premised on information provided by CIBC. Moreover, CIBC agrees that any prosecutions relating to transactions with Enron that are not time-barred by the applicable statute of limitation on the date of this Agreement may be commenced against CIBC in accordance with this Agreement, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of this Agreement. By this Agreement, CIBC expressly intends to and does waive any rights in this respect.

12. It is further agreed that in the event that the Department, in its sole discretion, determines that CIBC has violated any provision of this Agreement, (a) all statements made by

³ The Monitor shall be Day, Berry & Howard. If that law firm cannot serve as Monitor for any reason, another Monitor shall be retained in the manner specified in this Agreement.

or on behalf of CIBC, or any testimony given by CIBC and any employee (current or former) before a grand jury, the United States Congress, the SEC, the Federal Reserve, OSFI, in bankruptcy or civil litigation or elsewhere, and any leads derived from such statements and testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against CIBC and (b) CIBC shall not assert any claim under the United States Constitution, Rule 410 of the Federal Rules of Evidence, or any other rule, that statements made by or on behalf of CIBC prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed.

13. The decision whether conduct and statements of any individual will be imputed to CIBC for the purpose of determining whether CIBC has violated any provision of this Agreement shall be in the sole discretion of the Department.
14. This Agreement expires three years from the date of its execution. It is further understood that this Agreement is binding only upon the Department and CIBC.
15. CIBC hereby warrants and represents that it is authorized to enter into this Agreement and that the person signing the Agreement has authority to bind CIBC.
16. This Agreement may not be modified except in writing signed by all the parties. This Agreement may be executed in counterparts.

Very truly yours,
LESLIE R. CALDWELL
Director, Enron Task Force

Andrew Weissmann
Deputy Director, Enron Task Force

Linda A. Lacewell
Special Attorney, Enron Task Force

Gary Naftalis, Esq., Counsel to CIBC

APPENDIX A

A. Background

1. CIBC is a full service financial institution operating primarily in Canada and the United States, as well as in the West Indies, Europe and Asia. CIBC is the fifth largest bank in Canada and ranked, by assets, among the ten largest banks in North America as of July 31, 2001.
2. Enron rated financial institutions according to a tier system based on a variety of factors, including the ability and willingness of the institution to engage in large, complex transactions in rapid fashion. Enron routed its most attractive and lucrative business to institutions it had rated as "Tier 1." By 1998, CIBC had engaged in a number of significant, complex financial transactions with Enron and craned substantial fees, but had not attained Tier 1 status, which it desired to do. Several meetings were held between Enron and CIBC senior management, during which Enron set out parameters for CIBC to meet in order to achieve Tier 1 status. In early 2000, after CIBC satisfied these parameters, Enron awarded CIBC Tier 1 status.

B. The Use of FAS 125/140 Transactions by Enron and CIBC

3. Beginning in 1998, CIBC engaged in a series of FAS 125 /140 transactions with Enron, knowing that Enron's purpose in entering into these transactions was to remove assets from its balance sheets and book earnings and/or cash flow at quarter and year-end.

C. Early Termination of FAS 125/140 Transactions

4. In two FAS 125/140 transactions between June 1998 and September 1998 (Riverside 3 and 4, monetizing interest in Teesside Power Holding Limited), CIBC and Enron entered into contemporaneous unwritten understandings that CIBC, as agent for the lender group in the case of Riverside 4, and Bankers Trust, as agent for the lender group in the case of Riverside 3, would demand repayment, and thereby terminate the transaction on agreed-upon or definable terms, at the earlier of the alternative maturity dates specified in the documents. In three FAS 125/140 transactions between January 1999 and March 2000, CIBC understood that the transaction would be terminated prior to the stated maturity date. These transactions involved the following projects: Riverside 5 (monetization of interests in Teesside Power

Holdings Limited), Project Discovery (monetization of shares and warrants of FirstWorld Communications, Inc.) and Project Ghost/Specter (monetization of shares of Rhythms NetConnections, Inc.)

D. "Equity" in FAS 140 Transactions

5. In 1999, Enron solicited CIBC to become the three percent "equity" holder in FAS 125/140 transactions as well as to provide the lucrative debt component of the transaction. In order for such a transaction to be properly taken off balance sheet, at least 3% of the financing had to be from an independent equity source that was truly at risk.
6. CIBC provided the "equity" stake only because Enron's senior management first orally promised CIBC that the "equity" would be repaid at or before maturity at par plus an agreed-upon yield. CIBC sought and obtained such promises from Enron's senior management in connection with its three percent equity investment in Projects Leftover, Nimitz, Alchemy, Discovery and Hawaii 125-0.
7. The following charts show, by business unit, approximately how much of Enron's reported pre-tax income (before interest, minority interest and income taxes, or "IBIT") and cash flows were attributable to FAS 125/140 transactions with CIBC.

Retail Energy Services ("EES")

Year/Quarter	Total Income	CIBC FAS Trans.	% of Income	Cash Flows
1998	(\$119,000,000)	\$0	0.00%	\$0
1999	(\$68,000,000)	\$11,428,560	14.39%	\$11,428,560
2000	\$165,000,000	\$167,456,500	101.49%	\$92,444,450
1Q01	\$40,000,000	\$30,000,000	75.00%	\$30,000,000
2Q01	\$60,000,000	\$47,500,000	79.17%	\$47,500,000

Wholesale Energy Operations & Services (ECI & EI; EBS in 1999 only; in 2001, commodity related risk management was moved from retail to wholesale)

Year/Quarter	Total Income	CIBC FAS Trans.	% of Income	Cash Flows
1998	\$968,000,000	\$287,800,000	29.73%	\$457,800,000
1999	\$1,317,000,000	\$95,000,000	7.21%	\$787,500,000
2000	\$2,260,000,000	\$36,800,000	1.63%	\$36,800,000
1Q01	\$755,000,000	\$0	0.00%	\$0
2Q01	\$802,000,000	\$0	0.00%	\$0

Broadband Services ("EBS") (2000 forward)

Year/Quarter	Total Income	CIBC FAS Trans.	% of Income	Cash Flows
2000	(\$60,000,000)	\$53,000,000	46.9%	\$178,000,000
1Q01	(\$35,000,000)	\$57,900,000	62.33%	\$57,000,000
2Q01	(\$102,000,000)	\$0	0.00%	\$0

Enron Corporate (total of all business segments)

Year/Quarter	Total Income	CIBC FAS Trans.	% of Income	Cash Flows
1998	\$1,582,000,000	\$287,800,000	18.19%	\$457,800,000
1999	\$1,995,000,000	\$106,400,000	5.33%	\$798,900,000
2000	\$2,482,000,000	\$257,256,500	10.36%	\$307,244,450
1Q01	\$795,000,000	\$87,900,000	11.05%	\$118,300,000
2Q01	\$793,000,000	\$47,500,000	5.99%	\$117,500,000

THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS (CANADA)
OTTAWA, ONTARIO

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

by
THE FEDERAL RESERVE BANK OF NEW YORK
NEW YORK, NEW YORK

Agreement by and among)
)
CANADIAN IMPERIAL BANK OF COMMERCE)
Toronto, Ontario) Docket No.
) 03-043-WA/RB-FHC
THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS)
Ottawa, Ontario)
)
and)
)
FEDERAL RESERVE BANK OF NEW YORK)
New York, New York)
)

WHEREAS, Canadian Imperial Bank of Commerce, Toronto, Ontario ("CIBC"), is an organization that engages in banking operations and other financial activities and conducts business through various subsidiaries, branches, agencies, and other banking offices in the United States;

WHEREAS, the Superintendent of Financial Institutions (Canada), Ottawa, Ontario (the "Superintendent"), is the home country supervisor of CIBC and in that capacity is the primary supervisor of the global operations of CIBC, including but not limited to supervising the risk management and corporate governance policies and procedures of CIBC on a consolidated basis;

WHEREAS, the Board of Governors of the Federal Reserve System (the "Board of Governors") through the Federal Reserve Bank of New York (the "Reserve Bank") is the host, country supervisor of CIBC's U.S. banking offices that engage in banking operations in the United States;

WHEREAS, the Superintendent and the Reserve Bank routinely consult and coordinate with one another in the discharge of their respective banking supervision responsibilities to the extent that they pertain to CIBC's banking operations in the United States;

WHEREAS, CIBC and some of its subsidiaries and banking offices entered into certain complex structured finance transactions involving special purpose entities with the Enron

Corporation, Houston, Texas, and the company's affiliates and related interests (collectively, "Enron"), which transactions took place during the period June, 1998 to October, 2001;

WHEREAS, the Superintendent and the Reserve Bank are concerned that the manner in which CIBC and some of its subsidiaries and banking offices participated in complex structured finance transactions with Enron exposed them to significant risks and that CIBC and some of its subsidiaries and banking offices may not have adequately assessed the goals, purposes, and results of those transactions and their potential risks;

WHEREAS CIBC entered into an agreement (the "DOJ Agreement") on December 22, 2003 with the United States Department of Justice (the "DOJ");

WHEREAS the Superintendent and the Reserve Bank by this Agreement are addressing the particular activities engaged in, by and between, CIBC and Enron in the United States that are the subject of the DOJ Agreement and are thus requiring CIBC to adopt and implement the specific new policies and procedures relating to the integrity of client and counterparty financial statements and quarter-end and year-end transactions described in the Appendix to this Agreement (the "Policies and Procedures"):

WHEREAS, CIBC agrees to adopt and implement by February 27, 2004 the Policies and Procedures; and

WHEREAS, on December 17, 2003, the board of directors of CIBC, at a duly constituted meeting, adopted a resolution authorizing and directing the proper officers to enter into this Agreement.

NOW, THEREFORE, CIBC, the Superintendent and the Reserve Bank agree as follows:

Policies and Procedures

1. CIBC agrees to adopt and implement by February 27, 2004 the Policies and Procedures. CIBC shall not amend or change the Policies and Procedures without the approval of the Superintendent and the Reserve Bank.

2. CIBC agrees that for a period of three years, it will retain, at its expense, an independent firm (the "Auditor") who shall be acceptable to the Superintendent and the Reserve Bank and who shall,

- (a) assist the Superintendent and the Reserve Bank in monitoring CIBC's compliance with, and the effectiveness of, the Policies and Procedures and any enhancements or revisions thereto; and
- (b) report in writing on at least a semi-annual basis to the board of directors of CIBC as to CIBC's compliance with the Policies and Procedures.

3. Within thirty (30) days of this Agreement, CIBC shall require the Auditor to submit to the Superintendent and the Reserve Bank, for review and, after consultation with the Reserve Bank, approval by the Superintendent, a written plan detailing how the Auditor intends to monitor CIBC's compliance with, and the effectiveness of, the Policies and Procedures, CIBC shall require the Auditor to adopt the approved plan and to implement and comply with it. The approved plan shall not be amended or rescinded without the prior written approval of the Superintendent, which approval shall be given only after consultation with the Reserve Bank.

4. CIBC shall require the Auditor to report in writing to the Superintendent and the Reserve Bank any non-compliance by CIBC with the Policies and Procedures as soon as practicable after the Auditor becomes aware of the non-compliance.

5. As soon as practicable after it is advised by the Auditor of the non-compliance referred to in paragraph 4, CIBC shall report in writing to the Superintendent and the Reserve Bank the reason for the non-compliance and the corrective action to be taken by CIBC.

6. CIBC shall provide copies of the reports referred to in paragraph 2 to the Superintendent and the Reserve Bank as soon as practicable after their completion.

7. The Superintendent and the Reserve Bank may provide a copy of the reports provided to them under paragraphs 4, 5, and 6 to the DOJ.

8. CIBC agrees that the Superintendent, the Reserve Bank, and the monitor referred to in paragraph 10 of the DOJ Agreement shall be permitted access to the Auditor referred to in paragraph 2 of this Agreement, to reports prepared by the Auditor and drafts of those reports, and to persons involved in the preparation of the Auditor's reports to discuss the Auditor's reports, the Auditor's methodology and the basis for the Auditor's conclusions for the purpose of enabling the monitor to discharge the responsibilities imposed on the monitor under the DOJ Agreement.

Notices

9. All communications regarding this Agreement shall be sent to:

(a) Mr. Nicholas Le Pan
Superintendent of Financial Institutions (Canada)
255 Albert Street
Ottawa, Ontario
K1A 0H2

(b) Mr. William L. Rutledge
Executive Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

- (c) Mr. Ron Lalonde
Senior Executive Vice-President and Chief Administrative Officer
Canadian Imperial Bank of Commerce
Commerce Court West
56th Floor
199 Bay St.
Toronto, Ontario
M5L 1A2

Miscellaneous

10. The provisions of this Agreement shall be binding on CIBC and its subsidiaries, branches, agencies, and other banking offices in the United States.

11. Each provision of this Agreement shall remain effective and enforceable until stayed, modified, terminated or suspended in writing by the Superintendent and the Reserve Bank, acting together.

12. Notwithstanding any provision of this Agreement, the Superintendent and the Reserve Bank, acting together, may, in their sole discretion, grant written extensions of time to CIBC to comply with any provision of this Agreement.

13. The provisions of this Agreement shall not bar, estop or otherwise prevent the Superintendent, any Canadian federal or provincial agency or department, the Board of Governors, the Reserve Bank, or any U.S. federal or state agency or department, from taking any further action affecting CIBC, any of its current or former officers or directors or institution-affiliated parties as defined in sections 3(u) and 8(b)(4) of the Federal Deposit Insurance Act, as amended (the "FDI Act")(12 U.S.C. 1813(u) and 1818(b)(4)), CIBC's successors or assigns, or any of CIBC's subsidiaries, branches, agencies, and other offices in the United States.

14. (a) This Agreement is a "prudential agreement" for the purposes of section 644.1, and is enforceable under section 646, of the Bank Act (Canada).

(b) This Agreement is a "written agreement" for the purposes of, and is enforceable by the Board of Governors as an order issued under, section 8 of the FDI Act (12 U.S.C. 1818).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 22nd day of December, 2003

CANADIAN IMPERIAL
BANK OF COMMERCE

THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS

By: _____

By: _____

Ron Lalonde, Senior Executive Vice-President
And Chief Administrative Officer

Nicholas Le Pan, Superintendent of
Financial Institutions

FEDERAL RESERVE BANK OF NEW YORK

By: _____

William L. Rutledge, Executive
Vice-President

APPENDIX

CIBC POLICIES AND PROCEDURES ON THE INTEGRITY OF CLIENT AND COUNTERPARTY FINANCIAL STATEMENTS AND QUARTER-END AND YEAR-END TRANSACTIONS

The following sets forth CIBC's plan for addressing the integrity of "Client", "Counterparty" and "Third Party" transactions and "Quarter-End" and "Year-End" transactions. All employees must comply with these policies and procedures and violations of these policies and procedures may lead to disciplinary action, including termination.

A. General Prohibitions and Rules

1. **Structured Finance**. For a period of three years, commencing on December 22, 2003, CIBC will not engage in "certain structured finance transactions" on behalf of any Third Party. "Certain structured finance transactions" is defined as: (a) the structuring or arranging of, or investment in, the equity component necessary to achieve FAS 125 and/or 140 off-balance sheet treatment; (b) the structuring or arranging of, or investment in, tax-structured lease financings for Third Parties; and (c) the sponsoring and administration of United States, United Kingdom, and Australia based receivables conduit vehicles (provided that such conduits may be wound down or sold in an orderly fashion in the normal course of business).

2. **Misleading Third Party Activities**. CIBC may not engage in any transaction where CIBC knows or believes that an objective of the Third Party is to achieve a misleading earnings, revenue or balance sheet effect.

(a) **Undocumented Agreements**. CIBC will not engage in any transaction in which any term of the transaction related to risk transfer (whether or not legally enforceable) is not reflected in the written contractual documentation for the transaction.

(b) **Transactions with Agreed-Upon Early Termination**. CIBC will not engage in any transaction in which there is an agreement between the parties (whether or not legally enforceable) to unwind such transaction prior to its stated maturity at an agreed-upon price unless CIBC accurately reflects the agreed-upon unwind on its books and records and provides a written summary of such transaction and unwind directly to the independent auditor of the Third Party.

3. **Individual Accountability**. Each employee responsible for proposing or approving that CIBC enter into any transaction covered by these policies shall satisfy himself or herself that he or she is fully knowledgeable about all terms and agreements related to such transactions and that all applicable provisions of these policies and procedures and other CIBC policies and procedures have been fulfilled prior to execution.

B. Special Restrictions Applicable to Quarter-End and Year-End Transactions

4. In light of the heightened danger of abuse in connection with "Quarter-End and Year-End Transactions," the following policies and procedures apply specifically to such transactions:

- (a) Transactions Motivated by Accounting and Balance Sheet Considerations. CIBC will not engage in any Quarter-End or Year-End Transaction where CIBC knows or believes that the Third Party's primary motivation is to achieve accounting (including off-balance sheet treatment) objectives, unless such transaction is specifically approved by the Financial Transaction Oversight Committee ("FTOC") described below.

C. New Committee and New Committee Approval Process

- S. (a) CIBC will create a new committee and new approval process by creating the FTOC.
- (b) The FTOC will review the Quarter-End and Year-End Transactions referred to above.
- (c) The FTOC will also review all complex structured finance transactions effected by a Third Party with CIBC. A "Complex Structured Finance Transaction" means any structured transaction where;
 - (i) a known or believed material objective of such transaction is to achieve a particular accounting or tax treatment, including the objective of transferring assets off-balance sheet;
 - (ii) there is material uncertainty with regard to the legal or regulatory treatment of such transaction; or
 - (iii) the transaction provides the Third Party with the economic equivalent of a financing which, if characterized as a financing, would require committee approval.
- (d) The FTOC will also review all early unwinds of any Complex Structured Finance Transaction and any "Quarter-End" or "Year-End" Transaction and any termination of such transaction prior to its written originally contemplated maturity.
- (e) The FTOC also will review any transaction which any member of the FTOC determines is appropriate for FTOC review.
- (f) CIBC will not engage in any transaction within the purview of the FTOC without the transaction receiving the approval of the FTOC.
- (g) The FTOC will be composed of senior representatives (Head of group or experienced designee) of the various disciplines of CIBC including, but not limited

to, those principally responsible for risk management, legal, compliance, accounting, finance, tax and credit. No transaction will be deemed approved by the FTOC without the approval of all of the Heads of group (or experienced designee) as well as the senior business head(s) proposing the transaction. The Committee will record each decision made in connection with any transaction and keep a record of the participants in any such meetings. All records of the FTOC will be preserved for seven years.⁴

- (h) The FTOC will be responsible for the effective management of all risks associated with transactions within its purview. As a result, the FTOC will ensure that an assessment of legal and reputational risk is undertaken with respect to each transaction. In this regard, the FTOC will review a variety of factors, including, without limitation, an assessment of whether financial, accounting, rating agency disclosure or other issues associated with a transaction are likely to create legal or reputational risks.
- (I) To the extent the FTOC determines that any legal or reputational concern is present, it will review the overall customer relationship with the Third Party and shall use its best efforts to obtain as a condition precedent to further review and approval, complete and accurate information about the Third Party's proposed accounting treatment of the contemplated transaction and the effect of the transaction on the Third Party's financial disclosure. To the extent the information provided is insufficient or unsatisfactory, as determined by the FTOC, the transaction will not be approved by the FTOC or executed by CIBC. If the FTOC determines that the proposed transaction is suspicious, it will refer the matter to the DOJ monitor.
- (j) For each transaction considered, the FTOC will require the transaction sponsor to represent that such person is providing complete and accurate information regarding the transaction and the Third Party's purpose(s) for such transaction.
- (k) In addition, a full description of each transaction approved by the FTOC will be communicated in writing by the FTOC directly to the independent auditor of the applicable Third Party, regardless of whether the auditor has made a request for information from CIBC.

D. Referrals to the FTOC

6. CIBC shall communicate to its employees the substance of the following:

To ensure that all transactions that require approval of the FTOC are referred to the FTOC, these policies and procedures call for a broad category of transactions to be referred to the FTOC so that it can make the determination whether the transactions require FTOC approval. Accordingly, CIBC employees shall refer to the FTOC all transactions that:

Any CIBC employee who had any role in any FAS 125/140 transaction with Enron will not serve on the TOC.

- (a) An employee knows or believes may be motivated in whole or in part by the Third Party's desire to achieve a misleading earnings, revenue or balance sheet effect. Such referrals may be made anonymously, using the CIBC hotline (discussed below), or by other means.
- (b) An employee knows or believes may involve a contemplated agreement or understanding between the parties (whether or not legally enforceable) to unwind such transaction prior to its stated maturity at an agreed-upon or determinable price.
- (c) Are Quarter-End or Year-End Transactions as to which the employee knows or believes that one of the Third Party's motivations is to achieve an accounting (including off-balance sheet treatment) or tax objective.

7. Employees shall en on the side of referral to the FTOC if they have any question as to whether a transaction falls within the FTOC purview. Failure to refer transactions to the FTOC will be grounds for discipline, including dismissal.

8. The formation and mandate of the FTOC, as well as the policies and procedures set forth herein, shall be communicated to all employees involved in the origination, review and/or approval of structured transactions. Supervisors of such employees shall be responsible for ensuring that all applicable transactions are referred to the FTOC for review.

E. Training Program

9. CIBC will review and modify its existing training program to ensure compliance with the policies and procedures set forth above. The modified training will explain the new policies and procedures and highlight issues/factors which, if present in a transaction, would warrant additional scrutiny. Other issues/factors which may warrant additional scrutiny of the transaction and which will be included in the training program include but are not limited to the following:

- (a) Transactions where there is significant uncertainty with regard to the legal or regulatory treatment of the proposed transaction.
- (b) Transactions with pre-agreed profit/loss sharing or return on equity/return on investment arrangements with the Third Party.
- (c) Transactions known to be effected as a result of or in connection with changes to accounting principles or standards.
- (d) Transactions with back-to-back (circular) cash flows between CIBC and the Third Party or a special purpose entity.

F. Website, Employee Concerns, Ethics Hotline, Confidential Reporting

10. CIBC will develop an internal Policy and Approval Process Website that will articulate CIBC's applicable policies and the required approval process for the types of transactions described herein. The website will be available to all employees.

11. The website will provide opportunities for employees to communicate with the members of the FTOC concerning any questions or reservations any such employee may have with any transaction or approval process related thereto.

12. CIBC shall establish an Ethics Hotline as a mechanism to report inappropriate behavior and/or any failure to properly abide by these policies. Such reports may be made on a confidential and anonymous basis. CIBC shall not tolerate retaliation against those reporting any suspected violation in good faith. Those found to have retaliated will be subject to immediate dismissal.

G. Definitions

"Year-End Transaction" means any transaction effected within twenty-one (21) days of the Third Party's fiscal year-end period where there are continuing obligations between the parties subsequent to the year-end period.

"Quarter-End Transaction" means any transaction effected within twenty-one (21) days of the Third Party's fiscal quarter-end period where there are continuing obligations between the parties subsequent to the quarter-end period.

"Third Party," "Client", and "Counterparty" means any United States corporation that is registered under the Securities Exchange Act of 1934, any domestic or foreign affiliate of such corporation, any entity directly or indirectly controlled by such corporation, and any special purpose entity set up by such corporation.